Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Developing a Unified Intercarrier	**)**	**CC Docket No. 01-92**
Compensation Regime	**)**	

<u>COMMENTS OF CINCINNATI BELL INC.</u>

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SUMMARY

Cincinnati Bell does not endorse or reject any particular intercarrier compensation proposal, but provides comments on some of the issues raised by this proceeding. Cincinnati Bell supports a deregulatory approach that is neutral and minimizes arbitrage opportunities. Cincinnati Bell suggests that the Commission consider elimination of special treatment for ESPs and VoIP providers as an alternative to more substantial revision of the intercarrier compensation rules.

Cincinnati Bell urges the Commission not to base any reforms on controversial legal theories, so as not to burden the industry with the kind of litigation spawned by the unbundling rules over the past decade. If the Commission adopts a bill and keep mechanism, it should not overlook the carrier of last resort obligations of ILECs, the burden of which should be shared by all carriers. Cincinnati Bell also suggests that the Commission change the interconnection rules to allow incumbent LECs more flexibility in how they deliver traffic to other carriers.

Cincinnati Bell does not have substantial comments on traffic sensitive costs, except to note that not all networks are engineered the same, so some switching costs may be traffic sensitive in some networks, but not others.

With respect to access charge reform, Cincinnati Bell believes carriers should be allowed to use alternative mechanisms to recover revenues lost due to reduction or elimination of intercarrier access charges. If the Commission takes the step of changing intrastate access rates, a means should be made available for ILECs to replace that revenue as well. The Commission should consider the disparate impact access reform will have on small and mid-size carriers.

Finally, should the Commission develop rules applicable to transit traffic, Cincinnati Bell requests that the Commission develop a mechanism to allow transit carriers to recover the costs of this service from other carriers for whom it is performed.

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<u>COMMENTS OF CINCINNATI BELL INC.</u>

Cincinnati Bell Inc. ("Cincinnati Bell") is a small, integrated communications provider offering local, long distance, wireless, broadband and Internet access service in southwestern Ohio, northern Kentucky, and southeastern Indiana. Cincinnati Bell provides wireline local exchange service through its incumbent LEC subsidiary, Cincinnati Bell Telephone LLC ("CBT"),[1] and its CLEC subsidiary, Cincinnati Bell Extended Territories LLC ("CBET").[2] Cincinnati Bell also provides wireless and long distance service through Cincinnati Bell Wireless LLC ("CBW") and Cincinnati Bell Any Distance Inc. ("CBAD"), respectively. Cincinnati Bell offers these comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), released March 3, 2005.

I. <u>Introduction</u>

The views expressed by parties filing comments heretofore have ranged from urging the rapid adoption of a bill and keep regime for all types of carriers and traffic to recommending the retention of the existing calling party network pays ("CPNP") regime with additional regulatory intervention. In between these two extremes were a myriad of positions. At this point in the

[1] CBT has less than 2% of the Nation's access lines, as recognized under § 251(f)(2) of the 1996 Act.
[2] CBET provides facilities-based local exchange service in parts of southwestern Ohio outside CBT's traditional ILEC territory.

process, Cincinnati Bell is not endorsing or rejecting any particular intercarrier compensation proposal. However, Cincinnati Bell has comments on some of the issues raised by the various proposals and the FNPRM.

II. <u>General Comments on Intercarrier Compensation Reform</u>

The underlying basis for this proceeding is the widely-believed notion that existing inter-carrier compensation rules are not sustainable given the varying applications to different types of carriers and different kinds of traffic. Local exchange carriers generally compensate each other for terminating traffic through reciprocal compensation payments. Interexchange carriers generally compensate local exchange carriers for use of their networks through switched access and special access charges for both terminating and originating traffic. Enhanced service Providers/Information Service Providers (ESPs/ISPs) have generally been exempted from paying access charges and obtain access to local networks by buying local business lines. It is unclear whether or how VoIP providers compensate anyone other than their individually selected partner carriers, whom they use as an interface to other carriers.

The Commission has tentatively concluded that three basic principles underlying the existing intercarrier compensation rules must be re-examined: 1) the rules are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services; 2) existing compensation regimes are based on the recovery of average costs on a per-minute basis; and 3) the calling party's carrier compensates the called party's carrier – "calling-party-network-pays" (CPNP).

Cincinnati Bell believes that any new plan should be simple to administer, competitively and technologically neutral, and should minimize arbitrage opportunities. Regardless of whether the Commission retains a CPNP system or moves to a bill and keep regime, Cincinnati Bell believes the end result should be a system that is deregulatory in nature, eliminates arbitrage opportunities, and does not impose significant new compliance costs on any party. If the Commission ultimately decides to maintain the CPNP regime for access charges, it should refrain from implementing new, more cumbersome regulatory processes, such as would be involved in prescribing rates in an effort to artificially duplicate a competitive marketplace.

Replacing one set of complex regulatory rules with another set of equally complex rules clearly would not be deregulatory, nor would it be economically efficient. Regulation, by its very nature, can never create a system that will operate as efficiently as an unregulated competitive market. To the extent that the Commission determines that regulation is still needed as competition continues to expand throughout the telecommunications marketplace, it should strive to minimize those regulations in order to minimize the efficiency distorting impacts such regulations can engender.

As long as regulations exist, there will be opportunities for arbitrage. It is an unavoidable by-product of regulation. If a regulation exists, parties will try to find loopholes that can be exploited. This behavior is not unique to CLECs, in spite of the attention focused on the manner in which they have benefited from the ISP reciprocal compensation scenario. However, the fact that parties act in their own best interest and take advantage of such opportunities does not make arbitrage economically efficient overall, nor should such opportunities be allowed to continue, once identified.

Some of the proposals, while perhaps theoretically attractive from an economic perspective, are likely to be problematic when implemented in the real world, if for no other reason than their complexity. These new regimes, designed for a competitive marketplace, are more complex and require more regulation than the system they were designed to replace. They will undoubtedly create new arbitrage possibilities unknown today and unanticipated. Arbitrage, such as that resulting from the ESP exemption that led to the ISP reciprocal compensation debacle, is beneficial to no one except the party that realizes the financial gain. All other parties and consumer welfare are losers. In comparing the costs and benefits of staying under a CPNP regime versus moving to bill and keep, one factor that should not be discounted is that under the existing system, the arbitrage opportunities are already known.

In addition to distortions caused by the ESP exemption, the Commission's recent deregulatory treatment of VoIP technology has introduced another regulatory arbitrage opportunity. New entrants have initiated voice telephony using VoIP technology without being subjected to traditional telephone company regulation or intercarrier compensation rules. Intercarrier compensation issues cannot be truly resolved until the Commission also resolves the regulatory issues surrounding VoIP.[3]

Cincinnati Bell is not convinced that a total elimination or overhaul of the current system is necessary, or even practical. Simply applying the same compensation rules to ESPs/ISPs and VoIP providers as have traditionally applied to local and interexchange carriers may be a simpler solution than creating a whole new compensation system.

The Commission desires that an intercarrier compensation approach be competitively and technologically neutral. Cincinnati Bell agrees with this statement, but it is equally important that new technologies not be given an unfair advantage relative to existing technologies. The

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[3]The Commission has an open rulemaking proceeding to consider the appropriate regulatory treatment of VoIP services. However, it also recently preempted state regulation of Vonage's services, leaving great uncertainty whether Vonage is a telephone company and, if so, how it is to be treated. *See* Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, (rel. Nov. 12, 2004).

current system is distorted in favor of carriers using different and novel technologies. Past Commission actions have conferred advantages on new technologies in order to encourage their deployment (e.g., the ESP exemption to encourage development of the Internet, and exemption of VoIP providers from state telephone regulation). These exceptions have distorted the market and are a major cause of the perceived problems with the existing intercarrier compensation system. The regulatory system should not be used to select winners and losers or to promote one type of technology over another. In order for the Commission's first stated goal of promoting economic efficiency to be achieved, the system must be competitively and technologically neutral. Regulations should not be used to stimulate investment in one type of technology over another.

Cincinnati Bell favors an approach that limits the need for regulatory intervention. However, Cincinnati Bell is not sure that an intercarrier compensation regime can avoid making distinctions between types of carrier or types of traffic, because such distinctions may be required by jurisdictional considerations. Until the 1996 Act, the Commission had little authority over intrastate matters. Network costs had to be separated into the intrastate and interstate jurisdictions. The states regulate intrastate rates, while this Commission regulates interstate rates and use of local networks for interstate access. These jurisdictional limitations have not gone away. The 1996 Act empowered the Commission to establish rules for intercarrier compensation with respect to local traffic, but the Act has still not empowered the Commission to set local retail rates or intrastate access rates. Without a statutory change, Cincinnati Bell does not believe the Commission can force its desired reforms on intrastate access charges. Regardless of what the Commission does in this proceeding with respect to interstate access and intercarrier compensation (which must be consistent with the enabling statute in any case), the states retain authority over intrastate access rates. Absent a simultaneous and identical reform of intrastate compensation rules, distinctions between types of carriers and types of traffic are inevitable.

III. Reciprocal Compensation Reform

The Commission has requested comments on its legal authority to implement the various intercarrier compensation schemes. The initial comments have revealed a wide disparity of opinion whether the Commission has the legal authority to adopt certain provisions. For example, some commenters support implementation of bill and keep for all local traffic, while others contend the Commission has no authority to do so in light of § 251(b)(5). The past decade of litigation over the unbundling rules should be an object lesson in this proceeding. The Commission must ensure that the legal basis for its decision is sound and non-controversial. Unless the Commission has a clear legal basis for whatever intercarrier compensation solution is ultimately selected, further legal battles could delay establishment of a new regime for years to come. Uncertainty could be more damaging to the industry, the economy and consumers than maintaining the existing system. This would be particularly true if some components of the new plan are upheld while other parts are stayed. This could potentially open vast loopholes and arbitrage opportunities.

The current rules require the calling party's LEC to pay reciprocal compensation to the called party's LEC for transporting and terminating calls from the carriers' interconnection point to the called party.[4] Reciprocal compensation for the transport and termination of telecommunications traffic is governed by §§ 251(b)(5) and 252(d)(2) of the Act. Section 251(b)(5) requires payment of reciprocal compensation and § 252(d)(2) establishes the cost

[4] 47 U.S.C. § 252(d)(2)(A); 47 C.F.R. § 51.701.

standard for such compensation. The Commission's existing rules allow the "additional cost" under § 252(d)(2) to be determined using the same TELRIC standard used for UNEs.[5] In response to past efforts by IXCs to avoid access charges, the Commission has consistently interpreted § 251(b)(5) to only apply to local traffic, not interexchange traffic.[6] To be considered reasonable, § 252(d)(2)(A) requires that reciprocal compensation arrangements: (i) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier;" and (ii) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[7] However, § 252(d)(2)(B) specifically authorizes bill-and-keep arrangements and prohibits protracted rate regulation proceedings to establish those additional costs with particularity.

The Commission has heretofore limited bill and keep arrangements to situations where traffic is relatively balanced.[8] On the whole, most end user customers generate balanced traffic, meaning they originate and terminate a similar amount of calls. In a macro sense, this should translate into relatively balanced traffic between local carriers.[9] However, the introduction of the Commission's ESP exemption into the equation has caused a substantial market distortion. ESP traffic is all one direction and also tends to be of longer duration that the typical voice call.

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[5] 47 C.F.R. § 51.705(a)(1).
[6] 47 C.F.R. § 51.701(b)(1).
[7] 47 U.S.C. § 252(d)(2)(A).
[8] 47 C.F.R. § 51.713(a).
[9] This is true regardless of size disparity in the customer bases of the two carriers. For example, assume two local carriers, one with 9,000 customers and one with 1,000 customers. Assuming the customers are randomly distributed and have similar calling patterns, there is a 10% chance that a call originating from the larger carrier will be placed to a customer served by the smaller carrier, with a corresponding 90% chance of the reverse. These percentages, when applied to the different sized customer bases, result in the identical number of calls in each direction.

Because the Commission has long exempted this predominantly interstate traffic from access charges, these calls tend to be made over local business lines that generate one-way "reciprocal" compensation to the carrier serving the ESP. The anomaly of ESP traffic should not be the cause for replacement of the entire local intercarrier compensation scheme, when most of the problems can be solved by adjusting the treatment of that traffic. If the Commission revoked the ESP exemption, returning this traffic to the interstate access regime where it belongs, that would largely restore balance to local traffic and allow use of a bill and keep mechanism for true local traffic within the existing rules.

In spite of the fact that this simple solution exists, the Commission appears predisposed to eliminate CPNP, observing that it may be more rational to assume that both the calling and called party benefit from any given call. The Commission stated that, for customer choice in a competitive marketplace to be economically meaningful, customers should bear the cost of the network of their choosing and avoid the cost of the networks rejected. Similarly, networks should make investment decisions based on whether they can recover costs from the customers that investment will attract.

All other things being equal, these statements may be true. However, it overlooks the fact that in reality, not all carriers are treated equally. Specifically, it fails to recognize that ILECs have carrier of last resort ("COLR") obligations that no other carriers have. Therefore, ILECs cannot make investment decisions based solely on whether they can recover costs from the customers that investment will attract. Unless ILECs are relieved of this obligation, the new system must ensure the ILECs are compensated for the investment necessary to sustain the network.

The most important tenet of any new system should be to give each network provider a fair opportunity to recover its network costs. As long as ILECs are still subject to economic regulation and social obligations in the federal and/or state jurisdictions that do not apply to all other providers, this equality cannot be achieved by a pure bill and keep system. One of the principles behind bill and keep proposals is that each carrier should recover the costs of its network from its own customers, not customers of other providers. A cardinal assumption behind this principle is that each carrier has the ability to "right-size" its network to serve those customers it wishes to serve, no more and no less. ILECs, who are often required by state law to stand ready to serve every potential subscriber in their service area on short notice, do not have the ability to size their networks to only serve their actual customers. The ILEC must build and maintain a ubiquitous network that, by definition, must contain excess capacity. For every customer attracted to a competing network, that excess capacity only grows larger. The ILEC must remain ready to serve that customer again should they choose to return, while no competitor has any obligation to do so. This inherently results in ILECs having to recover greater network costs from their customer base than competing carriers. If incumbent carriers are limited to recovering their network costs from their actual end-user customers, rather from other carriers who also benefit from access to their ubiquitous local networks, ILEC costs per actual customer will always be higher and will grow in the future.

Any new system must contain mechanisms to recognize these additional constraints on an ILEC's ability to compete with unregulated companies. As long as ILECs still have COLR obligations, it is appropriate to allow them to recover some of their cost from other carriers that use their network. That way, all carriers would share the COLR obligation.

Regardless of what the Commission does with respect to intercarrier compensation, it should consider making changes to the existing interconnection rules. Current rules can be interpreted to grant a CLEC the power to dictate at what point it will interconnect with an ILEC's network so long as it is technically feasible.[10] This allows the CLEC to designate a point of interconnection that may be efficient for it, but inefficient for the ILEC. If reciprocal compensation is eliminated, CLECs could have a greater incentive to select an interconnection point closer to their network traffic centers and farther from the ILECs' customers to reduce their cost of facilities. Absent mutual agreement on interconnection point(s), ILECs should have an equal right to determine where they deliver traffic to CLECs. Otherwise, economic rationality can be overcome by individual CLEC desires. The CLEC should no more be able to dictate how an ILEC designs its network than the ILECs have control over CLEC network design.

The Commission also asked for comment on whether it could use its forbearance powers to invoke bill and keep. Cincinnati Bell submits that this would be unnecessary if ISP traffic is removed from the equation. For the Commission to use its authority under § 10 of the Act to forbear from certain aspects of the reciprocal compensation requirements of § 251(b)(5), it would have to demonstrate compliance with the three-part test in the statute.[11] Under one interpretation of § 252(d)(2), the Commission must assure that reciprocal compensation rates cover the "additional cost" of transport and termination, if any. To invoke forbearance, the Commission would have to make a determination that enforcement of the "additional cost" standard is not necessary to ensure that charges are just and reasonable.[12] This would seem to be self

[10] 47 C.F.R. § 51.305.
[11] 47 U.S.C. § 160(a).
[12] 47 U.S.C. § 160(a)(1).

contradictory, as § 252(d)(2) expressly requires that reciprocal compensation rates cover "additional costs" *before* they can be considered reasonable.

IV. Traffic Sensitive Costs

Cincinnati Bell does not intend to comment in detail on the issue of which costs are traffic sensitive. However, it does wish to address briefly one issue related to switching costs. The Commission should not assume that all carriers purchase digital switches that are equipped with the capacity to originate and terminate all of the traffic of a carrier's retail customers. In contrast to line ports, which exhibit a one-to-one relationship with the number of customers, CBT does not engineer its switching matrix to allow simultaneous connection of all lines. The switching matrix is sized to accommodate expected traffic volumes. Should call durations or the number of customers calling at the same time increase, additional switching matrix would be necessary to prevent significant blocking. The size of the switching matrix is not a function of the number of customers, but of the number of minutes of use. Therefore, this aspect of end office switching is traffic sensitive.

V. Access Charge Reform

In the event the Commission adopts an access reform mechanism that reduces or eliminates intercarrier payments, the Commission should allow an alternative mechanism by which carriers will be permitted to recover revenues previously received from interstate access charges. Such a mechanism is necessary in order for the rules to be competitively neutral and not disfavor incumbents dependent on access revenues. Price cap carriers are presently allowed to develop access rates without cost justification in exchange for certain productivity decreases resulting in decreased earned revenues. Elimination of this substantial revenue stream would upset the existing regulatory compact. The elimination of interstate switched access charges without an opportunity to earn the revenue in another fashion could be confiscatory, but carriers should not be required to demonstrate that they will be unable to recover their costs from other sources before being allowed to establish such mechanisms. For small price cap carriers like CBT, conducting such cost analyses would be extremely burdensome given the very limited resources available. Price cap carriers have been relieved of rate of return restrictions at both the federal and state level for many years and the Commission's present desire to rationalize intercarrier compensation is not a proper occasion to reintroduce rate of return regulation in a competitive environment. ILECs who impose new charges on their customers to recover lost access revenues are sufficiently at risk to competitors who do not impose such charges. Further regulatory review is inefficient and unnecessary. The market will limit what can be sustained.

Cincinnati Bell urges the Commission to conclude that alternative cost recovery mechanisms are needed. The Commission must allow carriers the opportunity to earn this lost access revenue in the transition to a new compensation regime in order to make any regime change revenue neutral to the affected carriers. For price caps carriers, the Commission should define revenue neutrality based on a carrier's current actual access revenues, not an authorized rate of return or some other measure.

Some of the proposals to eliminate access charges suggest that such revenue streams be replaced with end user charges, similar to the subscriber line charge (SLC) while other proposals rely more heavily on additional universal service funding. Cincinnati Bell has reservations about proposals that rely too heavily on universal service since the existing universal service support mechanisms are already overtaxed. This revenue is a subsidy from some carriers' customers to other carriers' networks. If the goal of intercarrier compensation reform is to reduce or eliminate subsidies, replacing lost access revenue with universal service subsidies may be a worse cure than the disease. In addition, expanding universal service subsidies would create a whole new level of complexity and bureaucracy to determine who contributes, who draws from the fund, and on what basis. In the case of access charges, at least the charges are paid by the carrier whose customers made the calls. In the case of universal service, more efficient carriers end up subsidizing less efficient carriers. Thus, if access charges are replaced, it may be best to do so with explicit and direct charges.

However, ILECs facing competition may not be able to increase end-user charges without losing customers. As a result, any proposal that shifts recovery to end-users must allow ILECs flexibility to recover their costs from end users in the same manner as competing carriers (i.e., no caps, no requirement that the charge be separately stated on customer bills, etc.). The Commission should eliminate the SLC cap and permit price cap LECs to charge end users market rates.

If the Commission acts to reduce or eliminate intrastate switched access charges (which Cincinnati Bell does not believe it has the authority to do), it should also assure that price cap LECs have the opportunity to offset those intrastate revenue losses with alternative cost recovery mechanisms, just like with interstate access charges. If the Commission cannot do so, it should not tinker with intrastate access rates.

Finally on the subject of access charges, the FNPRM appears to assume that all price cap carriers are the same and fails to recognize the differences between the large, national price cap carriers and the smaller price cap carriers. Like the CALLS plan, any new plan must recognize the differences between the various price cap carriers. The differences are related to size, not just rural/non-rural status, or price cap vs. rate of return. The FNPRM, at ¶ 116, identifies issues unique to rate of return carriers, but appears to assume that all price cap carriers have the equal ability to negotiate favorable agreements. Under a regime based solely on negotiated agreements, smaller carriers would be significantly disadvantaged because they will not have the bargaining power that large carriers have in negotiating contracts. Thus, in most cases, the best deal a smaller carrier can get is the default regime. For example, Cincinnati Bell's CLEC subsidiary had a recent experience attempting to negotiate a commercial agreements with a large ILEC, but was unable to obtain concessions from the standard terms and conditions offered and has insufficient purchasing volume to obtain discounted rates.

Any new plan must consider the disparate impact on small and mid-size ILECs as contrasted with the large ILECs, who due to pending mergers are also poised to be the largest IXCs. Once the large ILECs control the majority of the nation's long distance business as well as the majority of local access lines, the impact of shifting from an access charge recovery system to bill and keep would be largely mitigated for these large, national carriers. A significant portion of what the ILEC side of their operations would lose in access charge revenue would be saved on the IXC side of the business because of the corresponding elimination of access charges as expenses. Small and mid-size companies, who do not have a nationwide presence in both the local and long distance markets, would be faced with a significant loss in revenue without the corresponding access charge savings. In CBT's case, over $25 million in interstate access revenue is at stake annually if the Commission eliminates switched access charges without allowing an offsetting end user charge. This figure does not include the $57 million in interstate special access revenue which would also be at risk if carriers can gain similar access to CBT's network through free or low-cost switched connections. However, Cincinnati Bell's long distance provider, CBAD, would save less than $8 million in access charges paid to other local carriers.

Further, if the Commission eliminates distinctions between local and interexchange carriers for compensation purposes, it should also eliminate the current prohibition on the joint use and ownership of local and long distance switching and transmission facilities for small and mid-size carriers. This prohibition causes inefficiencies and unnecessary costs to such carriers and relaxing these restrictions would offset some of these costs.

VI. Jurisdiction Over Intrastate Access

With regard to the Commission's legal authority to set intercarrier compensation rules, Cincinnati Bell agrees that the Commission has authority under § 201 over jurisdictionally interstate traffic, and it clearly has authority over reciprocal compensation under § 252(d)(2). Of course, any changes to either of those regimes must be consistent with the applicable statutes and rationally justified. Cincinnati Bell is not convinced that the Commission has legal authority to require reform of intrastate mechanisms. Preemption jurisprudence is complex, but it has been well established that states retain sole authority over intrastate charges.[13] The Commission would have to a make a compelling case that no intrastate traffic is separately identifiable before it could preempt all state access rules. Cincinnati Bell does not believe the Commission could reform intrastate access charges without legislative change or a valid basis upon which the Commission would preempt contrary state action.

VII. Transit Traffic

The Commission has sought comment on whether ILECs have a legal obligation to handle transit traffic. Cincinnati Bell would submit that there is no direct answer to be found in the Act. Certainly, arguments can be made either way by combining and interpreting bits and pieces of the Act. The language of § 251(c)(2)(a), requiring incumbent LECs to interconnect

[13] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

with requesting carriers for the "transmission and routing of telephone exchange service and exchange access," could be argued to support transiting obligations. On the other hand, one would expect to find a more direct authorization if Congress intended transit traffic to be a mandatory subject of interconnection agreements.

In any event, CBT has typically addressed transit traffic in its interconnection agreements. The main problem CBT has experienced with transit traffic is the lack of a contractual relationship between the originating and terminating carriers, with the ILEC typically caught in the middle. CBT's agreements make clear that it has no obligation to pay the terminating carrier and that the originating carrier has a responsibility to enter into an agreement with the terminating carrier to handle compensation issues between those two parties, while taking the transiting carrier out of the middle. However, the Ohio Commission has expressly prohibited CBT from blocking transit traffic even if the other carriers fail to enter into direct agreements.

Should the Commission determine that it has legal authority to address transit traffic, and if it adopts a bill and keep arrangement for local traffic, the Commission should explicitly allow transiting carriers to bill the originating carrier (or devise rules allocating these costs to the originating and terminating carriers) and *not* impose a bill and keep obligation on the transit carrier. This is because the transit carrier has no end user customer from which to recover its network costs. The transit carrier has to maintain and operate network facilities to accommodate this transit traffic, which is solely for the benefit of other carriers (or their end user customers) and which provides no benefit to the transit carrier's own customers, who are not parties to these calls. Since the transit carrier has no relationship to the customers of the carriers on the ends of the call, it must be allowed to recover its costs from the other carrier(s).

A similar situation occurs in the access world with meet point billing. Oftentimes, an ILEC handles traffic between an interexchange carrier and another local carrier to whom the interexchange carrier has no direct facilities. Neither of the end users who benefit from these calls is a customer of the ILEC, so it has no one to recover its network costs from other than the other carriers. Therefore, whatever the Commission does in the way of access charge reform, it must not eliminate the opportunity of the ILEC to recover access charges from the other carriers involved with these calls. Otherwise, the Commission should require every carrier to build its own facilities to every other carrier and take the ILEC out of the middle.

VIII. Conclusion

Cincinnati Bell urges the Commission to consider the foregoing comments and to be mindful of the different impacts that intercarrier compensation and access charge reform would have on smaller carriers. To the extent any existing form of intercarrier compensation is changed or eliminated, smaller ILECs should be afforded an alternative mechanism to recover their costs in a competitively neutral manner.

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